

§41.35 Jurisdiction over appeal.

(a) *Beginning of jurisdiction.* Jurisdiction over the proceeding passes to the Board upon the filing of a reply brief under §41.41 or the expiration of the time in which to file such a reply brief, whichever is earlier.

(b) *End of jurisdiction.* The jurisdiction of the Board ends when:

(1) The Director or the Board enters a remand order (*see* §§41.35(c), 41.35(e), and 41.50(a)(1)),

(2) The Board enters a final decision (*see* §41.2) and judicial review is sought or the time for seeking judicial review has expired,

(3) An express abandonment which complies with §1.138 of this title is recognized,

(4) A request for continued examination is filed which complies with §1.114 of this title,

(5) Appellant fails to take any required action under §§41.39(b), 41.50(a)(2), 41.50(b), or 41.50(d), and the Board enters an order of dismissal, or

(6) Appellant reopens prosecution pursuant to §41.40(b) or in response to a new ground of rejection entered in a decision of the Board (*see* §41.50(b)(1)).

(c) *Remand ordered by the Director.* Prior to the entry of a decision on the appeal by the Board (*see* §41.50), the Director may sua sponte order the proceeding remanded to the examiner.

(d) *Documents filed during Board's jurisdiction.* Except for petitions authorized by this part, consideration of any information disclosure statement or petition filed while the Board possesses jurisdiction over the proceeding will be held in abeyance until the Board's jurisdiction ends.

(e) *Administrative remands ordered by the Board.* If, after receipt and review of the proceeding, the Board determines that the file is not complete or is not in compliance with the requirements of this subpart, the Board may relinquish jurisdiction to the examiner or take other appropriate action to permit completion of the file.

[76 FR 72297, Nov. 22, 2011]

§41.37 Appeal brief.

(a) *Timing.* Appellant must file a brief under this section within two months from the date of filing the notice of ap-

peal under §41.31. The appeal brief fee in an application or *ex parte* reexamination proceeding is \$0.00, but if the appeal results in an examiner's answer, the appeal forwarding fee set forth in §41.20(b)(4) must be paid within the time period specified in §41.45 to avoid dismissal of an appeal.

(b) *Failure to file a brief.* On failure to file the brief within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

(c) *Content of appeal brief.* (1) Except as otherwise provided in this paragraph, the brief shall contain the following items under appropriate headings and in the order indicated in paragraphs (c)(1)(i) through (v) of this section, except that a brief filed by an appellant who is not represented by a registered practitioner need only substantially comply with paragraphs (c)(1)(i), (c)(1)(ii), (c)(1)(iv), and (c)(1)(v) of this section:

(i) *Real party in interest.* A statement identifying by name the real party in interest at the time the appeal brief is filed, except that such statement is not required if the named inventor or inventors are themselves the real party in interest. If an appeal brief does not contain a statement of the real party in interest, the Office may assume that the named inventor or inventors are the real party in interest.

(ii) *Related appeals, interferences, and trials.* A statement identifying by application, patent, appeal, interference, or trial number all other prior and pending appeals, interferences, trials before the Board, or judicial proceedings (collectively, "related cases") which satisfy all of the following conditions: involve an application or patent owned by the appellant or assignee, are known to appellant, the appellant's legal representative, or assignee, and may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal, except that such statement is not required if there are no such related cases. If an appeal brief does not contain a statement of related cases, the Office may assume that there are no such related cases.

(iii) *Summary of claimed subject matter.* A concise explanation of the subject matter defined in each of the rejected